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Human rights situations that require the Council's attention

Written statement* submitted by Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Human rights situations that require the Council's attention

Human Rights Council, NGOs and other distinguished delegates at the Session have been listening to more than one discipline of opinion on Jammu and Kashmir. These opinions have become disappointingly more polarised and compartmentalised in recent years. The representation of the distributed people living under the three administrations on either side of cease fire line has tuned into a commercial enterprise and into a serious institutional and individual abuse of a myriad kind. A new culture of rent an NGO and hire an individual does not serve the cause of the 'human rights situation' in Kashmir. The malaise infesting some NGOs and various individuals has to be addressed in the interests of the mandate of the NGOs and Human Rights Council.

The present territorial Partition of the State of Jammu and Kashmir is temporary. It is based on the UNCIP brokered cease-fire agreement reached between India and Pakistan in 1949. Under the agreement India, Pakistan and UN have accepted that the former princely state of Jammu and Kashmir is disputed. Cease-fire has granted both signatories interim administrative authority, pending the final resolution of the dispute. UN Mechanism precludes India and Pakistan on their own from extending claims to sovereignty over all or at least part of the State. There is a confused amalgam of partial and overlapping sovereignties.

Indian and Pakistani references in the resolution of the question of 'equality' and self-determination of the people of Jammu and Kashmir have corresponding duties and responsibilities as well. Therefore, a better India-Pakistan equation in relations would pour out an illimitable benefit for the process and quality of life and in the resolution of the question of 'equality' and self-determination of the people of Jammu and Kashmir.

We have to admit that the people of Jammu and Kashmir could not benefit from the Indian, Pakistani and the UN reference in the matter of their 'equality' and 'self-determination'. They failed to construct an independent political and diplomatic narrative to prosecute the jurisprudence of their case at the UN Security Council. It is time that they start to examine the failed non-Kashmiri narrative of Politics, Militancy and Diplomacy.

The failure of the people of Jammu and Kashmir lies mainly with their inability to address in equity the question of their formal consent (Plebiscite) in India-Pakistan equation. Indian position set out in her petition of 01 January 1948 addressed to the UN Security Council in inclusive. It follows the terms of agreement contained in the bilateral agreement of 26/27 October 1947 reached with the Government of Jammu and Kashmir. Indian Government has taken upon to defend the territories and protect the lives, property and honour of the people in the State.

It is not clear whether Pakistan as a party to the dispute has a territorial outcome at the bottom of its sovereign interest and the assured uninterrupted use of natural resources, in particular waters embedded in the habitat of Kashmir or that it continues to have a due regard for the principle of 'equality' of the people as a UN Charter principle and the wisdom embedded in article 257 of the Constitution of Pakistan.

The failure of Pakistan to honour the Stand Still Agreement of August 1947 with the Government of Jammu and Kashmir remains an unfriendly act which has disturbed the merits of Kashmir case. The Indian petition of 01 January 1948 made under article 35 of UN Charter to the UN Security Council is inclusive Pakistan's response made on 15 January 1948 asking to cover "much larger ground and embrace all the fundamental differences" has been unhelpful. Pakistan's principal interest in the division of military stores, division of cash balances and interference (Indian) with the Reserve Bank so as to destroy the monetary and currency fabric of Pakistan are the highlights of a diplomacy which over rode the interests of the people of Jammu and Kashmir. There was no interest from November 1965 to August 1996, until the issue was hit by Rule 11 of the provisional rules of procedure of the Security Council.

Administratively, Pakistan still controls Azad Kashmir through two devices: the Azad Kashmir Council and importantly through the five lent officers that Islamabad continues to embed in the Azad Kashmir administration. These Pakistanis still fill the most senior positions in the Azad Kashmir administration – even though there are sufficiently skilled Azad Kashmiri officers now able to administer this region.

Pakistani lent officers in Azad Kashmir act as Secretary General/Chief Secretary, Finance Secretary, Accountant-General, Inspector General of Police and Chief Engineer/Development Commissioner. Pakistan has retained major share of authority in the Azad Kashmir Council as well. It is headed by the Prime Minister of Pakistan and he nominates

five members from amongst Federal Ministers and Members of Pakistan Parliament on it. The Federal Minister of State for Kashmir Affairs and Northern Affairs (Gilgit and Baltistan) remains the ex officio member of the Council. These seven people are non-State Subjects sitting in a legislative authority on a people who have been given into a temporary administrative control of Pakistan under the UNCIP resolutions. This mechanism of administration remains at variance with UN mechanism and manner of administration envisaged for Azad Kashmir and Gilgit Baltistan in UNCIP resolutions

The management of the people and the area through this mechanism has kept the economy of these two areas backward. Loss of connections with the Indian administered Jammu and Kashmir from 1947, particularly the Jhelum Valley Road that carried tourists and trade between Rawalpindi and the Kashmir Valley, has reduced Azad Kashmiri's economic options. Azad Kashmir has remained totally dependent on Pakistan for defence, employment, goods and markets, food and financial support. Pakistan has controlled the two factors that they could have exploited to reduce their region's dependency: hydroelectricity and foreign remittances. A dependant and pliant, Azad Kashmir has been Islamabad's liking.

The 1972 Simla Agreement gave Pakistan some sense of security that it could now invest in Pakistan-Administered Kashmir without fear of losing Azad Kashmir or the Northern areas and any Pakistani investment to India. After Simla, the plebiscite was off the India-Pakistan agenda and any Indian attempt to capture Pakistan-Administered Kashmir was unlikely to happen.

Pakistan after the election of the present Government has decided to shape its future foreign policy on four key priorities. It has decided to build a peaceful and prosperous neighbourhood, reach out to regional and international partners, focus on "trade, not aid" and lastly develop a consensus-based approach to counter terrorism. The change in the foreign policy of Pakistan is good news for the people of Pakistan, India and Kashmir. Unless Pakistan moves up in the ranks in diplomacy and economy of the league of nations, Kashmiris would not benefit from its reference in their case. A weak reference is never helpful and promotes frustration, as seen in early 1990s.

There is an urgent need that the Human Rights Council seeks means to assist all the people of Kashmir to avail the various reliefs contained in the jurisprudence of UN role in Kashmir case. The expression of a solidarity with the people of Kashmir on 5 February every year, briefing the foreign envoys and explaining the status of UN resolutions by the foreign office of Pakistan have no merit unless the people and the leaders of Kashmir assume the ownership of their case as "equal people'.

We have a template of solution provided by China under the title "Articles of Settlement" on 18 March 1948. It is the basis of another template for resolution of the dispute introduced by Belgium, Canada, China, Colombia, The United Kingdom and The United States of America adopted at the 286th Meeting as UN Security Council Resolution S/726 dated 21 April 1948. The three assemblies of Jammu and Kashmir and Kashmiri diaspora could be encouraged to construct an independent political and diplomatic narrative on Kashmir. United Nations and its sub ordinate bodies could guide and support the civil society institutions working on either side of cease fire line for the promotion and protection of human rights.

It is important that Human Rights Council flags its robust interest in the subdued role and the poor quality of life of the people of Jammu and Kashmir currently sandwiched in the India-Pakistan equation. Regard should be taken of the principle of 'equality' of the people and recourse to any 'territorial outcome' has to be opposed. The right to equality of the people has to be differentiated from the respective territorial claims (if any) of India and Pakistan. The economic disruption caused by de facto partition of Jammu and Kashmir along the Cease Fire Line needs to be addressed in the interests of peace and security and the overall welfare of people.

Human Rights Council, NGOs, Inter-governmental bodies, National Institutions and other delegates are respectfully urged to ensure that there is no secondary victimization of the these people by allowing their representation in this forum to turn into an institutional and individual business enterprise.